

July 23, 2008

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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Communication*: WC Docket No. 07-97, Petitions of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas

Dear Ms. Dortch:

Less than one week from the statutory 15-month deadline for Commission action on its forbearance petitions in the above-captioned proceeding, Qwest Corporation ("Qwest") filed a letter purporting to show the percentage of households in the Phoenix MSA that were wireless-only as of March 31, 2008.¹ The undersigned carriers, through their attorneys, hereby respond to Qwest's desperate last-minute attempt to manufacture some basis for support of its forbearance petition for the Phoenix MSA.

The *Nielsen Mobile Letter* submitted by Qwest purportedly shows that **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of all households in the Phoenix MSA

¹ Letter from Eric Fogle, Vice President – FlowShare Product Management, Nielsen Mobile, to Brad Hughes, Qwest (Jul. 20, 2008) ("*Nielsen Mobile Letter*"), appended to Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jul. 21, 2008) ("*Qwest Jul. 21st Ex Parte*").

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were wireless-only as of March 31, 2008.² This conclusion reportedly is based on **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL]³ conducted by Nielsen Mobile, the company formerly known as Telephia before being acquired by The Nielsen Company in 2007.⁴ Using the Nielsen Mobile wireless-only penetration figure, Qwest estimates that its market share in the Phoenix MSA is **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**, in its view “further underscoring [its] entitlement to relief in this proceeding.”⁵

There are several fundamental problems with use of the Nielsen Mobile wireless-only penetration figure for the Phoenix MSA. First, and most fundamentally, the independence of this data is questionable. As indicated above, until recently Nielsen Mobile was known as Telephia, a consumer research company with a history of close business relations with incumbent local exchange carriers (“ILECs”). Indeed, Eric Fogle, the author of the letter describing Nielsen Mobile’s findings for the Phoenix MSA, is a former BellSouth employee who as a BellSouth employee testified in support of ILEC interests (and against competitive carriers) in state commission proceedings on numerous occasions.⁶ More generally, the questionable independence of data produced by “for-hire” companies is the reason why the undersigned carriers have repeatedly urged the Commission to avoid proprietary data and to utilize wireless-only penetration data developed by neutral third parties such as the Centers for Disease Control (“CDC”) if it chooses to include wireless-only data in its forbearance analysis.⁷

² *Qwest Jul. 21st Ex Parte*, at 1.

³ *Nielsen Mobile Letter*, at 2.

⁴ See Nielsen to Acquire Telephia, Inc., the Leading Source of Consumer Research for the Telecom and Mobile Media Markets (Jun. 27, 2007), available at <http://www.nielsenmobile.com/html/NielsenRelease.html>.

⁵ *Qwest Jul. 21st Ex Parte*, at 1.

⁶ See, e.g., BellSouth Telecommunications, Inc., Direct Testimony of Eric Fogle, Florida Public Service Commission, Docket No. 040130-TP (filed Jan. 10, 2005); BellSouth Telecommunications, Inc., Direct Testimony of Eric Fogle, Tennessee Regulatory Authority, Docket No. 04-00381 (filed Jul. 26, 2005); BellSouth Telecommunications, Inc., Rebuttal Testimony of Eric Fogle, Public Service Commission of South Carolina, Docket No. 2003-326-C (filed Mar. 12, 2004).

⁷ See, e.g., Letter from Brad Mutschelknaus, Counsel to Covad Communications Group, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Apr. 24, 2008) (“*CLEC Apr. 24th Ex Parte*”), at 15-16. Of course, the undersigned carriers and others have repeatedly urged the Commission to exclude cut-the-cord wireless lines from its forbearance analysis. See, e.g., *CLEC Apr. 24th Ex Parte*, at 14-15.

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The dubious reliability of data produced by “for-hire” entities demands, at a minimum, that the methodology they have relied upon in arriving at their conclusions be completely transparent and fully vetted before their results are taken into account by the Commission. That requirement has not been met by the Nielsen Mobile data filed by Qwest. Neither Qwest nor Nielsen Mobile has provided sufficient detail regarding the methodology used to arrive at the wireless-only penetration figure contained in the *Nielsen Mobile Letter*. In the absence of this information, there is no way for the Commission (or interested parties) to test the accuracy, completeness, or reliability of the wireless-only penetration figure proffered by Nielsen Mobile.

Indeed, the undersigned carriers have identified numerous important (and fundamental) questions regarding Nielsen Mobile’s methodology and results that cannot be answered based on the extremely limited information Qwest and Nielsen Mobile have chosen to make available. For example, Nielsen Mobile states that it [BEGIN CONFIDENTIAL] [END

CONFIDENTIAL] in conducting its [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] of wireless-only penetration in the Phoenix MSA.⁸ Yet Nielsen Mobile fails to offer any description or explanation of this prior [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]. Nielsen Mobile further represents that it utilized several surveys,⁹ yet it fails to provide any information regarding those survey methodologies, including identifying the questions posed to respondents, how the individuals or households surveyed were chosen, or the number of Phoenix area individuals or households surveyed. Nielsen Mobile mentions that it [BEGIN CONFIDENTIAL

[END CONFIDENTIAL],¹⁰ yet it provides absolutely no explication of these models.¹¹ In short, the support for Qwest and Nielsen Mobile’s Phoenix MSA-specific wireless-only penetration figure is so devoid of detail and the wireless-only penetration figure is so incapable of being verified that it is useless to the Commission.

⁸ *Nielsen Mobile Letter*, at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Nielsen Mobile also appears to imply that it counts households as wireless-only even when they have a broadband wireline connection, which could greatly overstate the true percentage of households that are wireless-only. See *Nielsen Mobile Letter*, at 2 ([BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]).

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Moreover, even if Qwest and Nielsen Mobile had provided sufficient detail regarding the process used to arrive at a Phoenix MSA-specific wireless-only penetration figure (which they did not), it would still be appropriate for the Commission to ignore this data because it was submitted far too late in the forbearance process to allow for full review. Qwest attempts to excuse the fact that it is offering Phoenix MSA-specific wireless-only penetration data at the eleventh hour on the ground that it was not aware until “late in the process that there was an issue with continued reliance upon the federal government’s own national cut-the-cord data.”¹² Qwest’s statement is completely disingenuous. In fact, Qwest considered MSA-specific cut-the-cord wireless data highly relevant to the Commission’s analysis at the time it filed its forbearance petitions. Indeed, Qwest submitted a press release from Telephia (now Nielsen Mobile) announcing wireless-only penetration numbers for the twenty largest U.S. cities – including Phoenix, Denver, Minneapolis, and Seattle – as an attachment to the declaration supporting each of its petitions.¹³ Qwest argued that these market-specific wireless-only numbers should be taken into account by the Commission in assessing wireless-only market share in the four MSAs at issue.¹⁴ The undersigned carriers and others criticized the relevancy of the Telephia release on the ground that Qwest did not offer any statistical detail or description of the methodology used by Telephia.¹⁵ Qwest chose to ignore these criticisms. Qwest cannot now claim that it was unaware until the waning days of the statutory review period that geographic market-specific wireless-only data might be relevant to the Commission’s analysis.

As shown above, Qwest’s introduction of unsubstantiated wireless-only market data purporting to support its request for forbearance in the Phoenix MSA less than one week from the statutory 15-month deadline for Commission action on its petition falls far short of the mark and should be ignored by the Commission. Once again, a forbearance petitioner has presented the Commission and interested parties with a “moving target,” dumping new data into the record with far too little time remaining to seriously analyze its meaning or test its veracity. This recurring abuse has led interested parties to ask the Commission to impose a

¹² *Qwest Jul. 21st Ex Parte*, at 1.

¹³ *See, e.g., Brigham/Teitzel Declaration – Phoenix MSA*, Exhibit 5, at 5.

¹⁴ *See, e.g., Brigham/Teitzel Declaration – Phoenix MSA*, at ¶ 38 (“Telephia found that 13.5% of the survey respondents in the Phoenix area reported that they had cut the cord – a percentage that translates to over 207,000 Phoenix area households.”) (footnote and emphasis omitted).

¹⁵ *See, e.g., CLEC Apr. 24th Ex Parte*, at 17.

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“complete as filed” requirement for forbearance petitions¹⁶ but, at a minimum, must mean that such eleventh hour filings must be rejected as hopelessly tardy.

Respectfully submitted,

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